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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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EMERY VALENTINE,

Appellant,

vs.

R. E. ROBERTSON, B. M. BEHREND, as Treasurer of the City of Juneau, Alaska, and the City of Juneau, Alaska,

Appellee.

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**Transcript of Record.**

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Upon Appeal from the United States District Court  
for the District of Alaska, Division No. 1.

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FILED  
APR 4 - 1924  
P. D. MORRISON



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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EMERY VALENTINE,

Appellant,

vs.

R. E. ROBERTSON, B. M. BEHREND'S, as Treas-  
urer of the City of Juneau, Alaska, and the  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD.

WICKERSHAM & KEHOE, Juneau, Alaska,  
GROVER C. WINN, Juneau, Alaska,  
Attorneys for Appellant.

HELLENTHAL & HELLENTHAL, Juneau,  
Alaska, R. E. ROBERTSON, Juneau, Alaska,  
Attorneys for Appellees.

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In the District Court for the District of Alaska,  
Division Number One, at Juneau.

No. 2369-A.

EMERY VALENTINE, for Himself, and All  
Other Taxpayers of the City of Juneau,  
Alaska,

Plaintiff,

versus

R. E. ROBERTSON, B. M. BEHREND, as  
Treasurer of the City of Juneau, and the  
CITY OF JUNEAU, ALASKA,

Defendants.

AMENDED COMPLAINT.

Comes now the defendant by leave of the Court  
first obtained and files this amended complaint and  
for cause of action against the defendants alleges:

I.

That at all times mentioned in the pleadings in  
this cause and for more than ten years last past  
the plaintiff was and now is a citizen of the United

States, a resident within the City of Juneau, Alaska, and a large owner of both real and personal property, and was at all such times and now is a taxpayer in said City of Juneau, Alaska, wherein he has been elected Mayor several times; that at all times during the said period and now the plaintiff has paid large sums of taxes on his said property in said Juneau, Alaska, and that a large sum of the moneys in the City Treasury of Juneau represents, was and is the very moneys so paid by this plaintiff into said City Treasury.

## II.

That B. M. Behrends, defendant, is now and at all the times herein complained of was the duly elected, qualified and acting municipal treasurer of said City of Juneau, and as such was and is the lawful custodian of all public moneys raised therein by general taxation upon property in said City for municipal purposes; and was in [1\*] possession of the sums of public money hereinafter mentioned at the time of the passage by the Common Council of the City of Juneau of the ordinance of resolution hereinafter mentioned, and is now in the lawful possession of the sum of Five Hundred (\$500.00) Dollars thereof.

## III.

That on the 18th day of January, 1924, at the rooms of the City Hall in Juneau, Alaska, the Common Council of said City of Juneau met in regular session, and then and there passed an ordinance of resolution in writing by the unanimous votes of all

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\*Page-number appearing at foot of page of original certified Transcript of Record.



the members of said Council, except H. R. Shepard who was absent, appropriating the sum of Two Thousand (\$2,000.00) Dollars, out of the public money in the treasury of and belonging to said city, raised by said city by general municipal taxation in the said city upon all the real and personal property therein, including that of this plaintiff, subject to taxation for general municipal purposes, and in the said ordinance or resolution directed that said sum be paid to a competent person to be selected by the Common Council of the City of Juneau to compensate him and to defray his expenses to Washington, D. C., and there and return, to engage him while there to lobby before Congress of the United States and to present before Congress and other public authorities the necessity and desirability of the division of the Territory of Alaska into two territories; the erection of a Government dock at Juneau, the erection of a Government building at Juneau, the dredging of Gastineau Channel near Juneau, the digging of Hawk Inlet Canal, the digging of Oliver Inlet Canal, the establishment of a mail route on the north shore of Chichagof Island, in Southeastern Alaska, the establishment of a Land Office in Juneau, the dredging of Wrangell Narrows, in Southeastern Alaska.

#### IV.

And on said 18th day of January, 1924, at the said meeting of [2] said Common Council of the City of Juneau, Alaska, and after the passage of the said ordinance or resolution, the said Common Council by said unanimous votes of all its members

there present, only excepting Shepard who was absent by formal action written in its records selected and empowered and employed the defendant, R. E. Robertson, as the delegate to go to the City of Washington, D. C., under said ordinance or resolution, and perform the various acts of lobbying for the enactment of legislation by Congress to procure the division of the said Territory of Alaska and other objects set forth in said ordinance or resolution.

#### V.

At the said meeting of said Council on said January 18, 1924, as aforesaid, it was ordered by said unanimous votes of said Councilmen present that a warrant be drawn for the sum of Fifteen Hundred (\$1,500.00) Dollars, on the City Treasurer, B. M. Behrends, in favor of the delegate, R. E. Robertson, and that he be privileged, if found necessary to draw on the City Treasury for an additional Five Hundred (\$500.00) dollars, being the whole of said sum of Two Thousand (\$2,000.00) Dollars, so appropriated by the said ordinance or resolution.

#### VI.

That the said R. E. Robertson accepted the employment so tendered to act as such lobbyist as aforesaid, and to make the trip to Washington, D. C., and return for the objects described in said ordinance or resolution, and thereafter a warrant was signed by the Mayor of the City of Juneau, and countersigned by its municipal clerk in the sum of Fifteen Hundred (\$1,500.00) Dollars, and delivered to the said Robertson, and was by him pre-

sented to the defendant, B. M. Behrends, who then and there paid the said sum to the said Robertson, who now has it in his custody and possession, in the City of Juneau, Alaska, unexpended.

#### VII.

That the remainder of the sum so appropriated and authorized [3] to be paid by the said ordinance or resolution, to wit, the sum of Five Hundred (\$500.00) Dollars, is yet in the custody of said Behrends, defendant, as City Treasurer, and that unless he is restrained by order of this court he will pay the same to the said R. E. Robertson on his drafts under said ordinance or resolution, and the Mayor and the City Clerk will, unless the City is restrained, draw a warrant and deliver it to said Robertson for that sum, under the terms and alleged authority of said ordinance or resolution.

#### VIII.

That the said R. E. Robertson, defendant, has not yet left the City of Juneau, upon the services so mentioned and described in said ordinance or resolution and in this complaint, and has not now expended any part of the same, but is now in the City of Juneau, Alaska, and before the Court in this cause, with the whole of said sum of Fifteen Hundred (\$1,500.00) Dollars, so paid to him by the City of Juneau, and the defendant B. M. Behrends, Treasurer, in his possession unexpended.

#### IX.

That the Mayor and the members of the Common Council of the City of Juneau, Alaska, who passed said ordinance or resolution on January 18, 1924, as

aforesaid, are in collusion with the defendants Robertson and Behrends, and have refused to make any attempt to take any action whatever to prevent the use of the said Two Thousand (\$2,000.00) Dollars, or to recover the said sum of Fifteen Hundred (\$1,500.00) Dollars so now held by the defendant R. E. Robertson, as Trustee for the City of Juneau, and there is no public official in or representing the public in said City who will or has authority to do so; that plaintiff and all other taxpayers in the City of Juneau will receive and suffer irreparable injury and loss and damage from this unlawful appropriation of and expenditure of said public funds unless this court [4] shall restrain the expenditure of the same and cause it to be returned into the City Treasury; and plaintiff and such other taxpayers of said City of Juneau are wholly without any other remedy.

X.

That the ordinance or resolution and the action of the City Council in attempting to appropriate and expend the said sums or any part thereof for the purposes stated by said council and alleged in this complaint was and is *ultra vires* and void and not within the powers of the City or said council or any of the defendants in this action, and the payment of the said money to the defendant, R. E. Robertson, by the defendant B. M. Behrends, the City Treasurer, was and is in violation of law; that without this court shall by its order restrain the use of said money for the purposes stated, and by its mandatory injunction prevent the said Robert-

son from expending the same for the uses alleged the said moneys will be so expended and lost to said City to the great and irreparable damage of this plaintiff and other taxpayers of said City of Juneau.

WHEREFORE the plaintiff prays this Court to issue its order of injunction against the defendant B. M. Behrends, as Treasurer of the City of Juneau, Alaska, and restrain him from paying the said sum of Five Hundred (\$500.00) Dollars, or any part thereof, so appropriated by said City Council for the uses mentioned in said ordinance or resolution to the said Robertson for such uses, or at all.

That the Court issue its order of injunction against the said R. E. Robertson and restrain him from expending the said sum of Fifteen Hundred (\$1,500.00) Dollars, or any part thereof, now held by him as Trustee for the City of Juneau, Alaska, under the said pretended authority of said ordinance or resolution so passed [5] by said City Council, as such trustee or at all; and that he return the same into the City Treasury of said City of Juneau without expending any part thereof.

That the Court issue its order of injunction against the City of Juneau, and all its officers, agents, trustees, servants and employees, including the defendants in this cause, commanding them and each of them to refrain from doing any act or thing to expend or pay out any part or portion of the said Two Thousand (\$2,000.00) Dollars for the uses and objects so set out in the said ordinance or resolution of January 18, 1924,

That the Court grant this taxpayer and plaintiff such other and further relief as to the Court may seem meet and equitable in the premises, and for his costs and disbursements of action.

WICKERSHAM & KEHOE,  
GROVER C. WINN,

Attorneys for Plaintiff.

United States of America,  
Territory of Alaska,—ss.

Emery Valentine, being first duly sworn, deposes and says: I am the plaintiff named in the above and foregoing complaint as amended; that I have read the said amended complaint, know the contents thereof, and that the facts stated therein are true.

EMERY VALENTINE.

Subscribed and sworn to before me this 29th day of January, 1924.

[Notarial Seal]

J. W. KEHOE,

Notary Public for Alaska.

My commission expires Sept. 15, 1925.

Copy received and service accepted this 29th day of Jan., 1924.

HELLENTHAL & HELLENTHAL,

For the City of Juneau and Treasurer.

R. E. ROBERTSON,

K.,

For Defendant Robertson.

Filed in the District Court, Territory of Alaska, First Division. Jan. 29, 1924. John H. Dunn, Clerk. By ———, Deputy. [6]

In the District Court for the District of Alaska,  
Division Number One, at Juneau.

No. 2369-A.

EMERY VALENTINE, for Himself, and All  
Other Taxpayers of the City of Juneau,  
Alaska,

Plaintiff,

versus

R. E. ROBERTSON, B. M. BEHREND, as  
Treasurer of the City of Juneau, Alaska,  
and the CITY OF JUNEAU, ALASKA,  
Defendants.

APPLICATION FOR TEMPORARY INJUNC-  
TION.

Comes now the plaintiff, on his own behalf, and for all other taxpayers of the City of Juneau, Alaska, and moves this Honorable Court for an injunction to issue against the above-named defendants and each of them, restraining them and each of them from paying the sum of Two Thousand (\$2,000.00) Dollars, or any part thereof, mentioned in the complaint of the plaintiff against said defendants filed in the above-entitled court and cause, and the affidavit hereto attached as a part of this application, to the said R. E. Robertson, defendant herein, or to any one for him; and restraining the said R. E. Robertson from accepting or receiving the said money, or any part thereof, until the further order of this Court in the premises.

This application is based upon the attached affidavit of the plaintiff, Emery Valentine, upon the complaint in the above-entitled cause and court filed, and upon the bond in the sum of Five Hundred (\$500.00) Dollars submitted herewith as a condition to the issuance of said restraining order or injunction.

Dated at Juneau, Alaska, this 28 day of January, 1924.

WICKERSHAM & KEHOE,  
GROVER C. WINN,

Attorneys for Plaintiff.

Filed in the District Court, Territory of Alaska, First Division. Jan. 28, 1924. John H. Dunn, Clerk. By \_\_\_\_\_, Deputy. [7]

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In the District Court for the District of Alaska,  
Division Number One, at Juneau.

No. 2369-A.

EMERY VALENTINE, for Himself, and All  
Other Taxpayers of the City of Juneau,  
Alaska,

Plaintiff,

versus

R. E. ROBERTSON, B. M. BEHREND, as  
Treasurer of the City of Juneau, Alaska,  
and THE CITY OF JUNEAU, ALASKA,  
Defendants.



## AFFIDAVIT OF EMERY VALENTINE.

United States of America,  
Territory of Alaska,—ss.

Emery Valentine, being first duly sworn, deposes and says: I am a citizen of the United States, a resident and property owner of the city of Juneau, First Division, Territory of Alaska, and a taxpayer therein; that affiant is now and at all times herein mentioned was the owner of property, both real and personal, in the said city of Juneau, Alaska, and has paid the said city at all times his taxes on said property.

That on the 18th day of January, 1924, the Common Council of the city of Juneau, Alaska, in regular session passed an ordinance or resolution by the unanimous vote of the said city council, with the exception of H. R. Shepard who was then absent, appropriating the sum of Two Thousand (\$2,000.00) Dollars out of the public moneys belonging to the said city in the treasury thereof raised from municipal taxation in said city upon the real and personal property therein, including the property of the affiant, subject to taxation for municipal purposes, and directing that said sum be paid by said municipal treasurer to the defendant, R. E. Robertson for the use of said R. E. Robertson in paying therefrom his traveling and subsistence and other expenses on a trip from Juneau, Alaska, to Washington, D. C., and other places, and return, for the purpose of lobbying for the division of the Territory of Alaska, by Con-

gress, and for the dredging of Gastineau Channel, the digging of Oliver Inlet Canal, digging Hawk Inlet Canal, dredging Wrangell Narrows, retention of the Army Post at Chilkoot Barracks, Alaska, and other similar lobby work, for other interested persons, corporations and communities in the Territory of Alaska.

That affiant is informed and believes and therefore so states that subsequent to the passage of said ordinance or resolution by said city council, the mayor of said city of Juneau, Alaska, drew an order for the sum of Fifteen Hundred (\$1500.00) Dollars to be deducted from said sum of Two Thousand (\$2,000.00) Dollars so appropriated which was countersigned by the city clerk of said city, ordering and authorizing the said B. M. Behrends, defendant, the treasurer of said city, to pay to said R. E. Robertson, defendant, the sum of Fifteen Hundred (\$1500.00) Dollars. [8]

Affiant is informed and believes and therefore states that unless this Court grants the injunction prayed for in the complaint herein that the said officers of the said Common Council of the City of Juneau, Alaska, will pay over to the said R. E. Robertson, defendant, for the purposes hereinabove set forth the sum of Fifteen Hundred Dollars, and the remaining sum of Five Hundred Dollars, or part thereof, and that the said R. E. Robertson, defendant, will thereupon leave the City of Juneau, Alaska, and the jurisdiction of this court.

That unless the injunction prayed for in this action is granted by this Court this affiant and all other taxpayers of the City of Juneau, Alaska, will lose said sum of Two Thousand Dollars, and will suffer injury and irreparable loss by reason thereof.

EMERY VALENTINE,  
Affiant.

Subscribed and sworn to before me this 27th day of January, 1924.

[Notarial Seal] JAMES WICKERSHAM,  
Notary Public for Alaska.

My commission expires Sept. 15, 1925.

Filed in the District Court, Territory of Alaska, First Division. Jan. 28, 1924. John H. Dunn, Clerk. By N. B. Cook, Deputy. [9]

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In the District Court for the District of Alaska,  
Division Number One, at Juneau.

No. 2369-A.

EMERY VALENTINE, for Himself, and All  
Other Taxpayers of the City of Juneau,  
Alaska,

Plaintiff,

versus

R. E. ROBERTSON, B. M. BEHREND, as  
Treasurer of the City of Juneau, Alaska,  
and THE CITY OF JUNEAU, ALASKA,  
Defendants.

## TEMPORARY RESTRAINING ORDER.

This cause coming on to be heard before the Court on this 28th day of January, 1924, on the complaint and affidavit of the plaintiff, and his application for temporary restraining order, and the Court having read the complaint and affidavit, and being fully advised thereby,

## IT IS NOW ORDERED,

That a temporary restraining order herein be issued as prayed for in the said complaint, and the defendants, and each of them, be and they are hereby restrained from paying the said sum of Two Thousand (\$2,000.00) Dollars, or any part thereof, mentioned in said complaint and affidavit, to the said R. E. Robertson, or to any one for him, or at all; and the said R. E. Robertson is hereby restrained from accepting or receiving the said money, or any part thereof, until the further order of this Court herein; that this restraining order shall take effect upon the filing by the plaintiff of a bond as provided by law in such cases in the sum of Five Hundred (\$500.00) Dollars, and that the Court will hear the defendant, or either of them, in opposition to the further continuance of this restraining order at 2:00 o'clock in the afternoon of this 28th day of January, 1924, or at any [10] time thereafter on one day's notice by the defendants; that a copy of this order with a copy of the complaint, summons, and the application for the injunction or restraining order herein be served on the defendants with the copy of the restraining order before said hour of 2 o'clock to-day.

Dated this 28th day of January, 1924.

THOS. M. REED,

District Judge.

Entered Court Journal No. S, page 355.

Filed in the District Court, Territory of Alaska, First Division. Jan. 28, 1924. John H. Dunn, Clerk. By \_\_\_\_\_, Deputy. [11]

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In the District Court for the District of Alaska,  
Division Number One, at Juneau.

No. 2369-A.

EMERY VALENTINE, for Himself, and for all  
Other Taxpayers of the City of Juneau,  
Alaska,

Plaintiff,

versus

R. E. ROBERTSON, B. M. BEHREND, as  
Treasurer of the City of Juneau, Alaska,  
and the CITY OF JUNEAU, ALASKA,  
Defendants.

AMENDED RESTRAINING ORDER.

The above-entitled cause having come on to be heard of the 28th day of January, 1924, upon the complaint of the plaintiff together with an application for an injunction supported by the affidavit of the plaintiff, against the defendants and each of them, restraining them from paying the sum of Two Thousand (\$2,000.00) Dollars or any part thereof, appropriated by the Common Council of the City of

Juneau, Alaska, for the purposes set forth in the complaint of the plaintiff herein, to R. E. Robertson, and restraining R. E. Robertson, defendant, from receiving or accepting the said sum or any part thereof; and it now appearing to the Court that the plaintiff herein has this day filed in this court and cause an amended complaint in the above-entitled cause wherein it appears that the sum of Fifteen Hundred (\$1,500.00) Dollars of the Two Thousand (\$2,000.00) Dollars so appropriated by said Common Council of the City of Juneau, as in the original and amended complaint set forth, has been paid to said R. E. Robertson, defendant, by the Mayor and City Clerk of Juneau, and presented to the Treasurer, B. M. Behrends, defendant, and by him paid, and that said sum of Fifteen Hundred (\$1,500.00) Dollars is now in the custody and possession of R. E. Robertson, [12] defendant, and is unexpended by him, and praying, among other things that said R. E. Robertson, defendant, be restrained from using said sum of money so in his possession, or any part thereof, for the purposes so set forth in said complaints.

NOW, THEREFORE, it is hereby ORDERED, that the restraining order heretofore issued by this Court in this cause on the 28th of January, 1924, is hereby continued in full force and effect until the further order of this Court; and,

It is further ORDERED, that the defendant R. E. Robertson be and he is hereby restrained from expending said sum of money, to wit: Fifteen Hundred (\$1,500.00) Dollars, or any part thereof, now

held by him under the ordinance or resolution of the City of Juneau, of January 18, 1924; and,

It is further ORDERED, that the City of Juneau, and all its officers, agents, trustees, servants and employees, including the defendants in this cause, be and they are hereby restrained from doing any act or thing to expend or pay out any part or portion of said Two Thousand (\$2,000.00) Dollars for the uses and objects so set forth in the ordinance or resolution of the City of Juneau, Alaska, passed by the Common Council thereof on said 18th of January, 1924.

Dated this 30 day of January, 1924.

THOS. M. REED,  
District Judge.

Entered Court Journal No. S, page 359.

Filed in the District Court, Territory of Alaska, First Division. Jan. 30, 1924. John H. Dunn, Clerk. By V. F. Pugh, Deputy. [13]

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In the District Court for the District of Alaska,  
Division Number One, at Juneau.

CASE No. 2369-A.

EMERY VALENTINE, for Himself, and for all  
Other Taxpayers of the City of Juneau,  
Alaska,

Plaintiff,

vs.

R. E. ROBERTSON, B. M. BEHREND, as Treasurer  
of the City of Juneau, Alaska, and the  
CITY OF JUNEAU, ALASKA,

Defendants.

## DEMURRER.

Come now the defendants and demur to the amended complaint herein for the reason that the same does not state facts sufficient to constitute a cause of action; and especially demur on behalf of the defendant, R. E. Robertson, on the grounds that the amended complaint does not state a cause of action as to him.

HELLENTHAL & HELLENTHAL,  
R. E. ROBERTSON,

Attorneys for the Defendants.

Copies received Feb. 2, 1924.

WICKERSHAM & KEHOE,  
GROVER C. WINN,

Attorneys for Plaintiff.

Filed in the District Court, Territory of Alaska, First Division. Feb. 2, 1924. John H. Dunn, Clerk. By W. B. King, Deputy. [14]

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In the District Court for the District of Alaska,  
Division Number One, at Juneau.

CASE No. 2369-A.

EMERY VALENTINE, for Himself and all Other  
Taxpayers of the City of Juneau, Alaska,  
Plaintiff,

vs.

R. E. ROBERTSON, B. M. BEHREND, as Treas-  
urer of the City of Juneau, Alaska, and the  
CITY OF JUNEAU, ALASKA,  
Defendants.



MOTION TO DISSOLVE RESTRAINING  
ORDERS.

Come now the defendants and having filed their answer to the amended complaint herein move that the restraining orders heretofore issued in the above-entitled cause on the 28th day of January, 1914, and the 30th day of January, 1924, be dissolved for the reasons set forth in the answer herein, which answer is hereby referred to and made a part hereof.

HELLENTHAL & HELLENTHAL,  
R. E. ROBERTSON,  
Attorneys for the Defendants.

United States of America,  
Territory of Alaska,—ss.

Isadore Goldstein, being first duly sworn on oath, deposes and says: That he is the Mayor of the City of Juneau; that he has read the answer referred to in the foregoing motion and knows the contents thereof, and that the same is true as he verily believes.

I. GOLDSTEIN.

Subscribed and sworn to before me this second day of February, 1924.

[Notarial Seal] SIMON HELLENTHAL,  
Notary Public for Alaska.

My commission expires Jan. 12, 1924.

Copies received Feb. 2, 1924.

WICKERSHAM & KEHOE,  
GROVER C. WINN,  
Attorneys for Plaintiff.

Filed in the District Court, Territory of Alaska,  
First Division. Feb. 2, 1924. John H. Dunn,  
Clerk. By W. B. King, Deputy. [15]

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In the District Court for the District of Alaska,  
Division Number One, at Juneau.

CASE No. 2369-A.

EMERY VALENTINE, for Himself and All Other  
Taxpayers of the City of Juneau, Alaska,  
Plaintiff,

vs.

R. E. ROBERTSON, B. M. BEHREND, as  
Treasurer of the City of Juneau, Alaska,  
and the City of Juneau, Alaska,  
Defendants.

ANSWER TO AMENDED COMPLAINT.

Come now the defendants and for answer to  
the amended complaint herein, admit, deny, and  
allege:

I.

For answer to paragraph one of said amended  
complaint, the defendants admit that the plaintiff  
is a citizen of the United States, a resident of the  
city of Juneau, Alaska, and the owner of a large  
amount of real and personal property, and a tax-  
payer of the city of Juneau, Alaska, and that he  
has during the period therein mentioned paid a  
large sum in taxes on his said property in Juneau,  
Alaska; but deny that a large sum, or any sum

whatsoever of the monies in the city treasury in Juneau, Alaska, was and is the very money so paid by the plaintiff into the said city treasury.

## II.

For answer to parargraph two of said amended complaint, the defendants admit the allegations therein contained.

## III.

For answer to paragraph three of said amended complaint, the defendants admit that on the eighteenth day of January, 1924, at the place therein stated the Common Council of the city of Juneau, Alaska, met in regular session, as therein stated, and [16] then and there passed a resolution by the unanimous vote of all the members of said council, excepting H. R. Shepard who was absent, appropriating the sum of Two Thousand (\$2,000.00) Dollars of public money of the treasury of and belonging to the said city; but deny that said money so appropriated was raised exclusively by the said city by general municipal taxation in the said city, upon all the real and personal property therein, deny that said ordinance, or resolution, directed said sum to be paid to a competent person to be selected by the common council of the city of Juneau, Alaska, to compensate him and to defray his expenses to Washington, D. C., there and return, and to engage him while there to lobby before the Congress of the United States and to present before Congress and other public authorities the following:

The division of Alaska into two territories;  
The erection of a public dock at Juneau,  
Alaska;

The erection of a Government building at Juneau, Alaska;

The dredging of Gastineau Channel, near Juneau, Alaska;

The digging of Hawk Inlet Canal;

The digging of Oliver Inlet Canal;

The establishment of a mail route on the north shore of Chichagof Island in southeastern Alaska;

The establishment of a land office in Juneau, Alaska;

The dredging of Wrangell Narrows in southeastern Alaska;

and deny the whole and every part thereof, except as stated in the affirmative answer herein.

#### IV.

For answer to paragraph four of said amended complaint, the defendants admit that on the eighteenth day of January, 1924, at the said meeting of the Common Council of the city of Juneau, Alaska, and after the passage of the ordinance, or resolution, the said Common Council by unanimous vote of all its members present, only excepting H. R. Shepard who was absent, selected, empowered and employed the defendant, R. E. Robertson, as their delegate to go to the city of Washington, D. C.; but deny that the ordinance, or resolution, therein referred to, was as stated in the aforesaid [17] paragraph; and deny that said

R. E. Robertson was employed by the city of Juneau to perform the various acts of lobbying for the enactment of legislation by Congress to procure the division of said Territory of Alaska, as set forth in said amended complaint; but admit that said R. E. Robertson was employed as set forth in the resolution herein set forth.

## V.

For answer to paragraph five of the said amended complaint, the defendants admit the allegations therein contained.

## VI.

For answer to paragraph six of the said amended complaint, the defendants deny that R. E. Robertson accepted the employment to act as such lobbyist, as set forth in the amended complaint; and deny that said R. E. Robertson agreed to act in any manner different from the manner set forth in the affirmative answer; and admit that said R. E. Robertson agreed to make the trip to Washington, D. C., as hereinafter set forth and that thereafter a warrant was signed by the mayor of the city of Juneau, Alaska, countersigned by the clerk, which said warrant was presented to B. M. Behrends, the treasurer, and paid by B. M. Behrends, as in said paragraph alleged; but deny that said R. E. Robertson now has the money referred to in said paragraph in his custody and possession; and in this connection admit that said R. E. Robertson now has the sum of Fifteen Hundred (\$1500.00) Dollars in his account in the B. M. Behrends Bank,

in the city of Juneau, Alaska, and that it is unexpended.

#### VII.

For answer to paragraph seven of the said amended complaint, the defendants admit the allegations therein contained.

#### VIII.

For answer to paragraph eight of said amended complaint, [18] these defendants admit the same, except that they deny that the specific money paid to R. E. Robertson, by B. M. Behrends, as therein alleged, is still in his possession.

#### IX.

For answer to paragraph nine of said amended complaint, the defendants deny each and every allegation in said paragraph.

#### X.

For answer to paragraph ten of said amended complaint, the defendants deny each and every allegation therein contained.

AND FOR FURTHER ANSWER and by way of new matter, these defendants aver:

#### I.

That the city of Juneau is a municipal corporation, incorporated under the laws of the Territory of Alaska; and that Isadore Goldstein is the duly elected and qualified mayor of the city of Juneau, Alaska: and that J. J. Connors, J. L. Gray, A. F. McKinnon, William Reck, Thomas Judson, and H. R. Shepard are the duly and regularly elected councilmen of the city of Juneau, Alaska; and

that the defendant, R. E. Robertson, is the acting city attorney.

## II.

That the city of Juneau is the commercial center for the northern part of southeastern Alaska, through which city considerable business is carried on with the outlying towns and camps; that in connection with said business the city of Juneau built a city wharf, as it was authorized to do and spent a large amount of money equipping said wharf with facilities for conducting said wharfage business; that the improvement of and aids to navigation greatly increased the business done by the city on its [19] said wharf.

## III.

That the city of Juneau is the owner of all the streets within the municipality and it is the city's duty to keep said streets in repair; that for a long time past the city of Juneau has built its streets out of three-inch planking; that it has become impracticable, owing to the large number of automobiles in use in said city and to the rise of labor and material, to continue the method heretofore employed in building and improving streets; that permanent streets now have to be built necessitating the expenditure of a large amount of money, which the city of Juneau is unable to do unless it is authorized and empowered to issue bonds for said purpose; that it is necessary among other things, before it can issue said bonds, to have an act of Congress authorizing the issuance of said bonds; that a bill has been prepared and introduced into

the Congress of the United States by the delegate from Alaska, which bill, if it becomes a law, will give the city of Juneau said authority; that it is necessary, in order to secure the passage of said bill, to have a person who is conversant with the facts appear before the committees of Congress to explain the facts to said committees and work in conjunction with the delegate from Alaska to secure the passage of said bill authorizing said issuance of bonds.

#### IV.

That the citizens of Juneau, Alaska, and the citizens of southeastern Alaska, generally, had prior to the eighteenth day of January, 1924, been advocating the sending of persons to Washington, D. C., among which persons so mentioned a number of citizens had chosen R. E. Robertson, a person well qualified [20] and in possession of all the facts necessary to represent said citizens in Washington, D. C., and advocate certain legislation in connection with certain projects hereinafter enumerated in the resolution passed by the city council for the city of Juneau, on January 18, 1924.

#### V.

That the city of Juneau was interested in many of the projects advocated by the citizens of the community and enumerated in the resolution hereinbefore referred to, a copy of which is attached hereto, that the consummation of many of said projects would be of great benefit to the City of Juneau, generally, and particularly in connection with the city's ownership of its wharf and facilities;



that considering said benefits, the city council endorsed the various projects above referred to.

#### VI.

That the citizens of the City of Juneau and the community surrounding Juneau had made arrangements with R. E. Robertson for him to proceed to Washington, D. C., and for him to use his best endeavors to forward the passage of legislation advancing the aforesaid projects, at which time the said R. E. Robertson consented to act for the City of Juneau in connection with the passage of the bill allowing the said City of Juneau to issue bonds for street improvement and to use his best endeavors before the committees of Congress by explaining the facts to them and the needs of the City of Juneau in this connection, if the City of Juneau would appropriate sufficient money to pay his expenses in going to Washington.

#### VII.

That on the eighteenth day of January, 1924, the Common Council of the City of Juneau, Alaska, passed a resolution setting [21] forth the attitude of the City in regard to said several projects and appropriating Two Thousand (\$2,000.00) Dollars in order to defray the expenses of R. E. Robertson to Washington, D. C., which money so appropriated or so much thereof as was necessary, was to be used by said Robertson in paying his expenses to Washington while there and return in representing the City in connection with the bill authorizing the City of Juneau to issue bonds for street

improvement purposes, a copy of which resolution is attached hereto, marked Exhibit "A," and made a part hereof.

#### VIII.

That the City of Juneau derives its revenue from taxing the real and personal property situate within said municipality from revenue and profit made by its city dock and facilities from license taxes and police fines imposed by it and receives the license taxes collected by the Federal Government for business conducted in the municipality; that the money in the City Treasury, prior to January 18, 1924, as well as the monies now in the City Treasury were derived from said sources; that the appropriation of and the paying out of the monies by the said City under the resolution attached hereto was done from monies in the Treasury of said City of Juneau, derived from the various sources aforesaid, which monies had not heretofore been appropriated or set aside for any purposes whatsoever, and will not necessitate the City of Juneau to levy a special tax and will not increase the tax levy for the current year.

#### IX.

That on the nineteenth day of January, 1924, pursuant to the resolution above-referred to, the Mayor of Juneau, Alaska, duly and regularly issued a warrant in favor of R. E. Robertson, in the sum of Fifteen Hundred (\$1500.00) Dollars, which warrant was countersigned by the City Clerk and drawn on the City [22] Treasurer, B. M. Behrends; and on the twenty-first day of January, 1924,

B. M. Behrends, Treasurer, duly and regularly paid R. E. Robertson the \$1500.00 represented by said warrant.

WHEREFORE these defendants pray that the complaint herein be dismissed and that they be allowed their costs and disbursements herein incurred.

HELLENTHAL & HELLENTHAL,  
R. E. ROBERTSON,

Attorneys for the Defendants.

Business Address: Juneau, Alaska.

United States of America,  
Territory of Alaska,—ss.

Isadore Goldstein, being first duly sworn, on oath deposes and says: That he is the duly elected and qualified Mayor of the City of Juneau, and is acting as such in making this verification; that he has read the foregoing answer to the amended complaint, and knows the contents thereof; and that the same is true as he verily believes.

I. GOLDSTEIN.

Subscribed and sworn to before me this second day of February, 1924.

[Notarial Seal] SIMON HELLENTHAL,  
Notary Public for Alaska.

My commission expires Jan. 12, 1926.

Copies received Feb. 2, 1924.

WICKERSHAM & KEHOE,  
GROVER C. WINN,

Attorneys for Plaintiff.

Filed in the District Court, Territory of Alaska, First Division. Feb. 2, 1924. John H. Dunn, Clerk. By W. B. King, Deputy. [23]

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EXHIBIT "A."

A special Meeting of the Common Council was held in the City Hall on January 29, 1924, at 7:30 o'clock P. M., called for the purpose of correcting the minutes of the regular meeting held January 18, 1924.

Present:	Absent:
J. J. Connors,	(None)
J. Latimier Gray,	
A. F. McKinnon,	
T. B. Judson,	
Wm. J. Reck,	
H. R. Shepard.	

Councilman Connors moved that whereas the records of the Common Council of the regular meeting held January 18, 1924, state the resolutions passed as follows:

"Councilman Connors introduced the following resolution endorsing the following projects:

Division of the Territory of Alaska;  
 Erecting of a Government Dock at Juneau;  
 Erection of a Government building at Juneau;  
 Dredging of Gastineau Channel at Juneau;  
 Digging Hawk Inlet Canal;  
 Digging Oliver Inlet Canal;  
 Establishing a mail route on north shore of Chichagof Island;  
 Establishing a Land Office at Juneau; and the Dredging of Wrangell Narrows:

and recommend that a competent person be selected by the Common Council of the City of Juneau, to personally present these projects to the United States Congress and to work in conjunction with the Delegate from Alaska for the passage by Congress of bills covering appropriations for the above projects, and resolve that sufficient funds be appropriated out of the municipal treasury, and not exceeding Two Thousand (\$2,000.00) Dollars for the purpose of paying the expenses necessary to send the above mentioned person to Washington, D. C. Whereupon Councilman Connors moved, and Councilman McKinnon seconded, that resolution as read by the Clerk be passed and approved and that a warrant be drawn for the sum of Fifteen Hundred (\$1500.00) Dollars on the City Treasurer in favor of the delegate, and that he would be privileged if found necessary to draw on the City Treasury for an additional Five Hundred (\$500.00) Dollars, and upon call of the roll, upon the adoption of the motion all councilmen present voted 'Yea,' and the motion was declared carried.

\* \* \* \* \*

Recommended that the Clerk send copies of the [24] resolution to all incorporated towns in S. E. Alaska adding to the resolution that the Delegate so sent to Washington would work against the proposed abandonment of Chilkoot Barracks.

Councilman Gray moved and Councilman Connors seconded that Mr. R. E. Robertson of Juneau, Alaska, be selected to represent Juneau at Washington, D. C., in the matters of the foregoing resolu-

tion, and upon call of the roll and upon the adoption of the motion all councilmen voted 'Yea,' and the motion was declared carried."

AND WHEREAS said resolutions as placed upon the minutes are indefinite, inaccurate, uncertain, omit an important part, and fail to correctly state the proceedings of the Common Council, it is moved by Councilman Connors that the resolutions be corrected to read as follows:

That whereas the City of Juneau is the owner of a valuable wharf property built and equipped at the expense of many thousands of dollars; and whereas the consummation of the project hereinafter referred to will bring business to its said city wharf and add greatly to its value and directly effect the proprietary interest of the City of Juneau to said wharf property and wharfage business, and will result in great benefit to the community generally.

BE IT RESOLVED that the Common Council endorse the projects referred to in the written resolutions, to wit:

Division of the Territory of Alaska;

Erection of a Government dock at Juneau;

Erection of a Government building at Juneau;

Dredging of Gastineau Channel at Juneau;

Digging Hawk Inlet Canal;

Digging Oliver Inlet Canal;

Establishing a mail route on the North shore of

Chichagof Island;

Establishing a Land Office at Juneau, Alaska;

Dredging of Wrangell Narrows; [25]

All of which are set forth in said resolutions, the part of which relating to the following is in words and figures, as follows, to wit:

“Whereas, on November 6th, 1923, at a special election held for the purpose of getting the expression of the voters relating to the Division of the Territory of Alaska, the voters of Juneau overwhelmingly expressed themselves in favor of such a division, and, further, that on the 15th day of November, 1923, a convention of delegates appointed by the Common Councils of the different municipalities of Southeastern Alaska drew up a Memorial petitioning the United States Congress to create a separate Territory of the First Judicial Division of Alaska, and also drew up a proposed Organic Act to be presented to Congress with the Memorial, And,

Whereas, The First Judicial Division of Alaska is without a United States Land Office and the need of a land office at Juneau, the Capital of Alaska, is becoming more apparent each day, And,

Whereas, The increased need and work for government vessels in Southeastern Alaskan waters has made it necessary for the Government to consider the erection of a Government Dock in Southeastern Alaska, and further, the geographical location of Juneau makes it the logical place for the erection of such a dock, and further, the Common Council of the City of Juneau feel that the erection of a government dock at Juneau, Alaska, is absolutely necessary for the docking and opera-

tion of government vessels operating in South-eastern Alaskan waters, And,

Whereas, the property owners, merchants and citizens of the City of Juneau acting on the Government's promise to erect a Government Building in the City of Juneau, have expended thousands of dollars in an endeavor to make Juneau a Capital City, by building homes, buildings and civic improvements, feel that in justice to them the Government should fulfill its promise and make available additional appropriations for the speedy erection of this building, the site of which has been partly donated by the citizens of Juneau, And,

Whereas, At the present time vessels leaving Juneau en route for the Westward, Skagway, and Chatham Straits points are required to take a course down Gastineau Channel and around Douglas Island a dangerous and hazardous route, a route in which many times of the year boats are required to put into harbors on account of storms especially while crossing the Taku. This route could and ought to be eliminated by the dredging of the North end of Gastineau Channel through to Stevens Passage. By so doing, navigation would not only be aided, but the distance between Juneau and Chatham Straits points would be shortened about twenty-five miles, And [26]

Whereas, Vessels at the present time en route from the Ocean and Chatham Straits points to Juneau must take a course North of Lynn Canal and around Point Retreat which is the Northerly end of Admiralty Island, and further this route is



unpassable many times of the year and especially in winter on account of the severe North winds which prevail, and further, this route could and ought to be eliminated by dredging a canal from Hawk Inlet to Stevens Passage, and by so doing vessels would at all times of the year be able to travel between Juneau and Chatham Straits points and would shorten the distance from Juneau to Chatham and Icy Straits points about fifty miles, And,

Whereas, A Canal connecting Stevens Passage with Oliver's Inlet is at the present time a great necessity owing to the increased towing business which is conducted by this section, the main source of supply being taken from Oliver Inlet section and to reach Juneau, boats must come North through Stevens passage and across Taku Inlet, a route dangerous and hazardous, And,

Whereas, That section of Icy Straits and Cross Sound and extending through Lisianski Straits South to Sitka is not on any mail route and depend upon an accommodating boat to take their mail to them, and further, the mining industries and canneries operating in that section are bringing to that section an increased population most of which is becoming permanent, the Common Council feel that a mail route taking in the above points and working separately from that route which takes in Chatham Straits and the South side of Chichagof Island and thus giving Sitka two mails a week and which would put Lisianski, Pinta Bay, Hirsh,

Chichagof, Port Altrop and other points on a mail route, should and ought to be created, And,

Whereas, Southeastern Alaska's main cut off, Wrangell Narrows, is inadequate for the larger vessels to pass through, making it necessary for them to take a route around Point Decision and up through Frederick Sound and by so doing they must eliminate Petersburg from their schedule in both the South bound and North bound trips, and lengthens the distance between Juneau and points South of Wrangell about one hundred miles. The Common Council of the City of Juneau feel that Wrangell Narrows should and ought to be dredged so that the larger vessels plying between the States and Southeastern Alaska points could pass through; thus putting Petersburg on their schedule, eliminate one hundred miles of dangerous waters and work a direct benefit to the people of all sections of Southeastern Alaska," And,

And the Common Council further endorse the movement started against the proposed abandonment of Chilkoot Barracks.

AND whereas it has become necessary to establish permanent streets in the City of Juneau and in order to do so it is necessary that an Act of Congress be passed allowing the City of Juneau to issue bonds in order to make said street improvements; [27]

AND whereas a bill has been introduced in the United States Congress looking towards said authorization; and whereas a local representative, familiar with the facts should be sent to Congress

to present the facts to the Committees of Congress and to work in conjunction with the Delegate from Alaska to secure the passage of this bill;

AND whereas the Citizens of the City of Juneau have taken a great interest in the matter hereinbefore endorsed and have been negotiating with R. E. Robertson, a person eminently fit and conversant with the above matters, with a view of sending him to Washington to present the above mentioned matters to the Committees of Congress; and whereas the City of Juneau is able to procure the services of said R. E. Robertson in connection with the Bill aforementioned looking towards the authorization of the Town of Juneau to issue bonds for street improvement without any further expense to the City of Juneau than the payment of said R. E. Robertson's expenses to Washington, D. C., which the City of Juneau is able to do from funds in the Treasury without levying a special tax for the purpose, and without increasing the tax levy for the current year.

BE IT RESOLVED that sufficient monies be appropriated out of the Municipal Treasury for the purpose of paying the expenses of the said R. E. Robertson in connection with his trip to Washington, D. C., not exceeding the sum of Two Thousand (\$2,000.00) Dollars, and that a warrant be drawn in the sum of One Thousand Five Hundred (\$1,500.00) Dollars on the City Treasury in favor of the said R. E. Robertson; and that he be privileged, if he find it necessary, to draw on the City Treasury for the additional sum of Five Hundred

(\$500.00) Dollars, which motion was seconded by Councilman McKinnon and upon the call of the roll upon the adoption of the motion, all councilmen present voted "Yea" and the motion was declared carried.

(Signed) WM. J. RECK,  
Acting City Clerk.

(Signed) I. GOLDSTEIN,  
Mayor. [28]

In the District Court for the District of Alaska,  
Division Number One, at Juneau.

No. 2369-A.

EMERY VALENTINE, for Himself, and All  
Other Taxpayers of the City of Juneau  
Alaska,

Plaintiff,

vs.

R. E. ROBERTSON, B. M. BEHREND, as  
Treasurer of the City of Juneau, Alaska, and  
the CITY OF JUNEAU,

Defendants.

DEMURRER TO THE FURTHER AND AFFIRMATIVE ANSWER OF DEFENDANT.

Comes now the plaintiff, withdraws the former demurrer to the defendants amended answer, and now demurs to the further answer and affirmative matter therein stated in defendants' answer to the plaintiff's amended complaint in the above-entitled cause, and for cause of demurrer thereto says that

it appears upon the face thereof that the same does not state facts sufficient to constitute any defense or counterclaim to the said amended complaint of the plaintiff herein.

Dated February 8th, 1924.

WICKERSHAM & KEHOE,  
GROVER C. WINN,

Attorneys for Plaintiff.

Copy received and service accepted this 8 day of February, 1924.

HELLENTHAL & HELLENTHAL,  
Of Counsel for Defendants.

Filed in the District Court, Territory of Alaska, First Division. Feb. 8, 1924. John H. Dunn, Clerk. By W. B. King, Deputy. [29]

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In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.

No. 2369-A.

EMERY VALENTINE,

Plaintiff,

vs.

THE CITY OF JUNEAU et al.,

Defendants.

ORDER OVERRULING DEMURRERS.

This matter having heretofore on Wednesday, February 6, 1924, come regularly on for hearing on the defendants' demurrer to the plaintiff's amended complaint and on the plaintiff's demurrer

to the defendants' answer and particularly the affirmative defenses therein contained, and argument having thereupon been submitted by counsel for the respective parties, and the court having thereupon taken the said matter under advisement and now being fully advised in the premises:

NOW, therefore, it is hereby ordered that defendants' demurrer to plaintiff's amended complaint be and the same is hereby overruled and the defendants are hereby allowed an exception thereto, and

It is hereby further ordered that plaintiff's demurrer to defendants' said answer and the affirmative defense therein contained be and the same is hereby overruled and the plaintiff is hereby allowed an exception thereto, and the plaintiff is further allowed until Monday, February 11, 1924, in which to file his reply to said answer.

Done in open court this 9th day of February, 1924.

THOS. M. REED,  
District Judge.

Entered Court Journal No. S, page 382.

Filed in the District Court, Territory of Alaska, First Division. Feb. 9, 1924. John H. Dunn, Clerk. By W. B. King, Deputy. [30]

In the District Court for the Territory of Alaska,  
Division Numbered One, at Juneau.

No. 2369-A.

EMERY VALENTINE, for Himself and Other  
Taxpayers of the City of Juneau, Alaska,  
Plaintiff,

vs.

R. E. ROBERTSON, B. M. BEHREND'S, as  
Treasurer of the City of Juneau, Alaska,  
and the CITY OF JUNEAU, ALASKA,  
Defendants.

MEMORANDUM OPINION ON DEMURRERS.

This action is before me on demurrers filed by the defendants against the amended complaint of plaintiff; and also a demurrer filed by the plaintiff to the affirmative answer of defendants, which affirmative answer was filed at the same time as defendants' demurrer to the complaint. By stipulation of counsel the demurrers were argued before the Court at the same time. In order to get a full understanding of the litigation, it will be well to give a history of the same before considering the demurrers:

On January 28, 1924, Emory Valentine for himself and others taxpayers of the City of Juneau, brought this action to restrain B. M. Behrends as Treasurer of the City from paying out and R. E. Robertson, defendant, from receiving certain moneys alleged to have been appropriated by the City Coun-

cil of Juneau to pay the latter's traveling and subsistence expenses to Washington, D. C., and return, for the purpose of lobbying before Congress of the United States for the division of the Territory of Alaska, the digging of the Hawk Inlet Canal and the Oliver Inlet Canal, and other similar lobbying work for other interested persons, corporations and communities than Juneau, in the Territory of Alaska, plaintiff alleging that the appropriation of said money was *ultra vires*, in violation of law and beyond the power of the corporation. With the petition and affidavit, a motion for a restraining [31] order, *pendente lite*, was submitted. Upon consideration of the motion and affidavit, an order was issued by the Court restraining defendants as prayed for, subject to a motion to dissolve the same on one day's notice.

On January 29, an amended complaint was filed by the plaintiff, setting forth the appropriation by the City Council of Juneau of the sum of \$2,000 to defray the expenses of a competent person in going to Washington, D. C., for the purpose of lobbying before Congress in furtherance of the projects aforesaid, and the selection of the defendant Robertson as such person on January 18, the drawing of a warrant in his favor for \$1,500 and the payment thereof by B. M. Behrends, the City Treasurer,—the said sum of \$1,500 to be used by defendant Robertson as aforesaid, and the balance of the appropriation of \$2,000 being subject to his order when required; and the amended complaint further allege that all of which actions of the City



Council of Juneau were *ultra vires*, without authority of law and to the irreparable injury of the plaintiff and the other taxpayers represented by him; that the Common Council and the other defendants were in collusion and refused to take any action toward abrogating said contract or the recovery of the money paid, etc.

On reading the complaint, an amended temporary restraining order was thereupon issued, subject to dissolution on notice, which amended order continued the original restraining order in force but added provision that the defendant Robertson be restrained from expending the sum of \$1,500 then in his hands for the purpose alleged, and restraining the City, its officers, and agents, and employees from paying out any further sum for the purposes aforesaid.

On February 2, the defendants appeared and filed a demurrer to the amended complaint and, at the same time, filed an answer under oath. The answer sets up an affirmative defense, and to this affirmative [32] defense the plaintiff has interposed a general demurrer. In each case, the demurrer attacks the legal sufficiency of the complaint and the sufficiency of the affirmative defense, respectively.

The demurrers came on for argument on February 4. In the argument no specific or general defect in the complaint was pointed out by the defendants. The argument was almost wholly directed to the sufficiency of the allegations of the affirmative answer. However, as the action depends on

the sufficiency of the complaint, and an attack on the sufficiency in law of an affirmative answer relates back to and involves the validity of the complaint, a discussion of the legal sufficiency of such answer necessarily involves the sufficiency of the complaint. I have therefore considered the sufficiency of the complaint as against the general demurrer of the defendants and am of the opinion that it states a good cause of action.

It alleges that the defendant is a taxpayer of the city of Juneau; that the defendant Behrends is treasurer and custodian of the public moneys of the city, that the Common Council appropriated the sum of \$2,000 of the public moneys of the city to be paid to a competent person, to be by it selected, to compensate him and to defray his expenses to Washington, D. C., and return, to engage while there in lobbying before Congress and presenting to Congress the desirability of the division of the Territory of Alaska into two territories, the erection of a government dock and building at Juneau, the dredging of Gastineau Channel, near Juneau, the digging of canals at Hawk Inlet and Oliver Inlet, the establishment of certain mail routes, the dredging of Wrangell Narrows, and other proposed matters not pertaining strictly to municipal government purposes, and that the City Council had selected the defendant R. E. Robertson as a suitable person to do the acts of lobbying for the purposes stated and thereupon drew a warrant in favor of defendant Robertson for such purposes in the sum [33] of \$1500, and that the

Treasurer paid out said sum to defendant Robertson who now has the same in his possession; that the remainder of said sum of \$2,000 remains in the custody of the Treasurer subject to the order of the said Robertson, and that the Treasurer will pay the same out to the said Robertson upon the order of the Mayor and City Clerk, unless restrained. That the Mayor and City Council who passed the ordinance appropriating said sum are in collusion with the Treasurer Behrends, and refuse to take any action in the premises to recover said sum of money so paid out, or to prevent any further sum to be paid out by the said Behrends; that the appropriation for the purposes aforesaid are beyond the powers of the City Council, being *ultra vires* and void, and the same, and the payments made thereunder, were and are in violation of law.

There is no question but that a taxpayer may enjoin the payment of moneys from the municipal treasury where the same is about to be illegally appropriated by the municipal authorities. Public moneys in the treasury of a municipal corporation are held in trust by the municipal authorities for the benefit of all the inhabitants thereof. The City Council function as trustees and the citizens of the town are *cestui que trust*; and a resident taxpayer may invoke the action of the court to prevent the misappropriation of municipal funds, or the illegal creation of a debt by the corporate authorities.

See,

Crampton vs. Zalnski, 101 U. S. 14;

Russell vs. Tate, 13 S. W. 136;

McIntire vs. El Paso County, 61 Pac. 237;

Lundler vs. Milwaukee Elec. R. Co., 83 N. W. 851;

2 Dillon, Municipal Corporations, pp. 915-919 and notes;

3 McQuillin, Municipal Corporations, section 2575;

19 Ruling Case Law, page 1163. [34]

The purposes alleged in the complaint for which defendant Robertson's expenses to Washington, D. C., are being paid by the city, are not, in my opinion, a public municipal purpose for the reason that the same are all extraneous to the corporation. While they may be, in themselves, meritorious projects and for the public interest generally, yet they are not for the public municipal interest as defined by the authorities. There is a clear distinction between a general public interest in a matter and a municipal public interest.

If the prime measure or purpose of an appropriation is to subserve a public municipal purpose it is immaterial if private interests are incidentally advantageously affected thereby; and so, if a private or other public interest, not directly pertaining to the corporation or within the powers of the corporation, is the primary object of the appropriation, it is not a public municipal purpose within the law. No one would contend that an appropriation by the city of Juneau to dredge Wrangell

Narrows, or to dig the Hawk Inlet or Oliver Inlet Canals, or any of the other purposes alleged in the complaint as purposes of the appropriation for which Mr. Robertson is to go to Washington, would be valid as a public municipal purpose,—hence, the expenses of a person lobbying for such objects could not be said to be incurred to promote a governmental municipal purpose.

It is well settled that a municipal corporation has such powers and such only as (1st) are expressly granted; (2d) are fairly or necessarily implied from those granted; (3d) are essential to the declared objects or purposes of the incorporation.

As to the third, it is not enough that they be convenient, or general, or indirectly act for the advantage of the corporation. It must appear that they are indispensable to the purposes of the corporation and in case of doubt of the existence of the power of the corporation to make an appropriation, the same should be denied by the Court. If the project or purpose for an appropriation is made under [35] the pretense of actual authority but intended to promote some unauthorized purpose, the courts will declare it illegal. If the primary object of a public expenditure is to subserve a public municipal purpose, the expenditure is legal notwithstanding it also involves as an incident an expense which, standing alone, would not be lawful; but if the primary purpose of an appropriation is to promote some purpose not within any express or implied powers of a corporation, the expenditure would be illegal, even though it

may incidentally serve some public purpose. (See McQuillin on Municipal Corporations, vol. 5, paragraph 2165.)

But the affirmative defense to which the demurrer of plaintiff is addressed alleges a different state of facts. It is alleged, in substance, that R. E. Robertson is the acting city attorney of the city; that the city is operating a municipal wharf as an aid to navigation, which greatly increases the business of the inhabitants of the city; that the city of Juneau is the owner of the streets of the city and for a long time has maintained the streets by means of wooden planking at a great expense but because of the increased traffic and the cost of labor and materials, it has become impracticable so to maintain the streets and that permanent streets will have to be built, necessitating a large expenditure of money, which the city is unable to do unless empowered to issue bonds for such purpose; and it is necessary to have an authorization from Congress of the United States for the issuance of said bonds. That a bill for this purpose has been introduced and is now pending in the Congress of the United States which, when it becomes a law, will authorize the city to issue bonds for that purpose, but that it is necessary for a person conversant with the facts to present the same to committees in Congress and ask, in conjunction with the delegate, for the passage of such bill. That the citizens of Juneau and southeastern Alaska generally, have been advocating the sending of a person to Washington [36] to take up legislation in connection with the

projects enumerated in the complaint of plaintiff; that the consummation of such projects would be of benefit to the city, and particularly in connection with its wharf facilities. That the citizens of other near-by communities had arranged to send a competent person to Washington to advocate the passage of such projects. That Mr. Robertson consented to act for the city in connection with the street improvement bonds if the city would devote sufficient money to pay his expenses in going to Washington; that the said money was appropriated by the City Council to pay the reasonable expenses of the said Robertson in connection with securing passage of the bill for the issuance of the bonds for street improvement purposes.

As against the demurrer, the facts alleged in the complaint must be taken as true. Boiled down, it appears from the answer that Mr. R. E. Robertson is City Attorney and as such acts in a legal advisory capacity to the City Council; the answer further shows that it is necessary for the City Council to provide funds for the construction of permanent streets; that under the bill now pending in Congress, the city is authorized to bond itself for that purpose, and that the appropriation of the money, payment of which is sought to be enjoined hereby, is to pay his expenses in going to Washington, to lay before Congress the necessity for relief in that regard by the passage of the bill.

It cannot be denied that the improvement and construction of public streets of the city is one of its municipal functions,—one which the city is

bound, for the benefit of its inhabitants, to perform; and any act done toward that end comes strictly within a public municipal purpose. If, then, the primary purpose of the trip to Washington of Mr. Robertson is, the purpose of securing authority to the city to improve or construct streets for the benefit of all the inhabitants of the municipality and the appropriation was made so as to enable that purpose [37] to be accomplished, it would, in my opinion, be a legitimate municipal purpose and come within the power of the Common Council of the corporation.

But it is urged that the services Mr. Robertson is to perform are merely lobbying services and, as such, are against public policy and void, and that therefore the city is not empowered to expend any money for such purposes.

But not all contracts to expend moneys to persons to secure legislative action are void. Each case must depend upon the terms of the contract itself. The distinction is pointed out in *Christ vs. Child*, 21 Wallace, 441-445. The Supreme Court therein says that an agreement to take charge of a claim before Congress and to prosecute it as agent or attorney for claimant by lobby services is void, but that contracts for purely professional services, such as drafting petitions for an act, attending to the taking of testimony, preparing arguments and submitting them to the committee or other proper authority, and so forth, are valid. But there is in this case a sufficient showing that the contract for the services of Mr. Robertson is not void under



the authority of the Supreme Court. Mr. Robertson, according to the answer, is the acting city attorney and legal adviser of the city. He is not to receive any compensation, contingent or otherwise, for his services. He is not seeking to influence Congress for the private benefit of any person or class of persons. He will represent the municipal corporation for public municipal purposes. The nature of the relation and the power sought by the Common Council, as stated in the answer, is ample to repel the slightest suspicion of improper motives on their part or on the part of Mr. Robertson.

It, however, is urged, under the authority of *Henderson et al., vs. the City of Covington*, 14 Bush (Ky.), 313, that it is not within the corporate powers for the council to advance moneys for the purpose of [38] sending anyone to Washington to influence legislation, even though for municipal purposes. At first reading, this case would seem to hold squarely that it is not within the powers of the corporate council of the City of Covington to appropriate the revenues of the city to obtain an increase of the powers of the corporation through persons sent by the common council to appear before the state legislature and Congress. The city council of Covington sought to increase the powers of the city so as to authorize the city to build a bridge across the Ohio River from Covington, Kentucky, to Cincinnati, Ohio. A number of persons, not employees of the city, incurred expenses in going before the legislature and Congress for that purpose and sought reimbursement from

the city council. The Court therein found that to build a bridge across the Ohio River was not part of the duty of the common council of Covington, nor was the legislation sought necessary to enable it to perform its corporate duties or to accomplish the purpose for which the corporation was formed, and that while it would be of great advantage to the city to have the bridge built by inviting population, enhancing the value of real estate, and so forth, it was not within the power of the city to appropriate money for the objects sought, as they were not necessary for the performance of its duty to its inhabitants or to accomplish its corporate purposes.

There is a broad distinction, however, between that case and the case at bar. According to the findings of the Court, it was not necessary for the performance of the duty of the common council to its inhabitants or to accomplish its corporate purposes, to build the bridge between the city of Covington and the city of Cincinnati. If it was not within the corporate purposes to do so, then it was not within the powers of the common council of the city to appropriate moneys for any person to further that object. The appropriation also was sought by persons not members of the city council itself or employees of the city. [39] In the case at bar, according to the allegations of the complaint, it is necessary for the carrying out of the purposes of the corporation that the powers of the city be increased so as to afford safe and permanent public streets for the City of Juneau, that additional

legislation be had. Mr. Robertson is the representative of the city and the purpose of the city in sending Mr. Robertson to Washington is that he advance and assist in securing legislation for purely municipal purposes.

In *Meehan et al. vs. Parsons et al.*, 271 Ill. 546, 111 N. E. Reporter, 529, a question similar to the question in this case was directly raised before the court. There a bill was filed to enjoin the city from paying the necessary expenses of its mayor in representing the city before Congress to obtain an appropriation from the federal government of moneys for levees and embankments in and about the city of Cairo. It was alleged in the bill that the services rendered and expenses incurred were for lobbying and that payment was illegal and unauthorized because the city had no power to pay out moneys for such purposes as not being within the corporate purposes of the city. In his answer, Parsons alleged that during the summer of 1912 he had attended the sessions of Congress in the city of Washington to lobby for and obtain, if possible, an appropriation of money for levees and embankments in and about the city of Cairo. He alleged that the work was done on behalf of the city of Cairo itself and at the instance and for the special benefit of said city; that his expenses were actual, reasonable and necessary, being incurred by him in the accomplishment of the work; that he had never at any time asked for or demanded any compensation from the city for his time and services and that it was necessary that

the levees of the city of Cairo be raised and strengthened, and that it was impracticable to provide such funds from the city treasury without assistance from the general government.

The contention was made that it was contrary to public policy [40] for the city to reimburse Parsons for expenses incurred in securing the passage of an appropriation for repairing and strengthening the levees at the city of Cairo. The Court says:

Appellees cite a number of authorities under the propositions; first, that an agreement for compensation contingent upon obtaining legislation is void; second, that a contract to promote the passing of laws and ordinances and paying expenses or compensation therefor is against public policy and cannot be enforced. The first of these propositions is not applicable to the facts in this case, and the second proposition is not sustained by the authorities cited in support thereof. The cases cited by appellees do hold, and properly, that an agreement for compensation which is contingent upon obtaining certain legislation is void. No such situation is presented by the facts in this case. While appellants aver in their answer that Parsons attended upon the sessions of Congress in Washington at the instance of the city, it is nowhere alleged by appellees, or admitted by appellants that Parsons was to receive any compensation contingent upon obtaining the desired legislation. On the contrary, it does

definitely and clearly appear that Parsons is claiming only a portion of his proper, necessary, and suitable expenses incurred in connection with the three trips he made to the city of Washington, and that he had no personal interest whatever in the outcome, and that personally he would neither be benefited nor damaged by any action which Congress might take in the matter. The courts have not gone so far as to hold that in no event and under no circumstances is it proper to interview and importune members of a legislative body to enact certain legislation in which the party importuning them may be interested.

The interests of the city of Cairo would undoubtedly be affected by whatever action Congress should choose to take in reference to the appropriation for the building of its levees. Should Congress refuse to appropriate any sum whatever, the whole burden of building and maintaining its levees would rest upon the city. That burden would be lightened by whatever appropriation Congress should see fit to make. The city, therefore, had the undoubted right to authorize its chief executive to appear before the various congressional committees and interview the members of Congress to urge upon them the claims of the city and to advance any legitimate argument in favor of the passage of an appropriation bill for the relief of the city in this respect. Having the undoubted right to intercede with the members

of Congress and to appear before its committees through its authorized agent, it must follow that the city undoubtedly would have the right to pay the necessary and legitimate expenses of its agent in presenting its claims to the members of Congress.

In the case at bar, it is alleged by the answer that it is necessary for the city to construct permanent streets instead of the temporary plank streets which are now in the city; that the city is unable, from its current revenues or other revenues, to secure sufficient funds to construct such streets, and that it is necessary that legislation pending in Congress, authorizing the city to bond itself to erect and construct such streets should be passed. It further appears that [41] Mr. Robertson would not be benefited and that he has no special interest in the construction of the permanent streets, and the case is squarely within the clear and lucid reasoning of the last cited case of the Supreme Court of the State of Illinois. See, also:

In re Taxpayers and Freeholders, 50 N. Y. Sup. 357-366. Sun Printing & Pub. Ass'n, 157 N. Y. 257-265, 46 N. E. 499. Dillon, Municipal Corporations, 4th Ed., pars. 75-76. Roberts vs. State, 160 N. Y. 217, 54 North-eastern, 679.

The demurrer to the affirmative answer will therefore be overruled.

THOS. M. REED,  
Judge.

Rendered Feb. 9, 1924.

Filed in the District Court, Territory of Alaska,  
First Division. Feb. 11, 1924. John H. Dunn,  
Clerk. By W. B. King, Deputy. [42]

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In the District Court for the District of Alaska,  
Division Number One, at Juneau.

No. 2369-A.

EMERY VALENTINE,

Plaintiff,

vs.

THE CITY OF JUNEAU, a Municipal Corpora-  
tion, et al.,

Defendants.

#### JUDGMENT AND DECREE.

Now on this day this matter coming up regularly before the Court, the plaintiff appearing by his attorneys, Messrs. Wickersham and Kehoe, and the defendants appearing by their attorneys, Messrs. Hellenthal & Hellenthal and R. E. Robertson, Esq., and thereupon plaintiff by his said counsel announcing in open court that the plaintiff would stand upon his demurrer heretofore filed to the defendants' answer and affirmative defense therein contained and, further, that plaintiff would not plead over, and thereupon defendants by their attorneys presenting their motion in writing that the Court vacate and set aside the temporary restraining order and injunction entered herein and their oral motion that judgment and decree be entered in favor of the defendants,

Now, therefore, the Court now being fully advised in the premises, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the temporary restraining orders and injunctions heretofore entered herein against the defendants be and the same are hereby vacated and set aside, and IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff take nothing by his action and that defendants go hence without day and that defendants have and recover from the plaintiff their costs herein expended, to be taxed, to all of which plaintiff excepts and his exception is allowed.

Done in open court this 11th day of February, 1924.

THOS. M. REED,  
District Judge.

Entered Court Journal No. S, page 389.

Filed in the District Court, Territory of Alaska, First Division. Feb. 11, 1924. John H. Dunn, Clerk. By W. B. King, Deputy. [43]



In the District Court for the District of Alaska,  
Division Number One, at Juneau.

IN EQUITY—No. 2369-A.

EMERY VALENTINE, for Himself, and All  
Other Taxpayers in the City of Juneau,  
Alaska,

Plaintiff and Appellant,  
vs.

R. E. ROBERTSON, B. M. BEHREND, as  
Treasurer of the City of Juneau, Alaska, and  
the CITY OF JUNEAU, ALASKA,  
Defendants and Appellees.

PETITION FOR APPEAL AND SUPERSE-  
DEAS.

The above-named Emery Valentine, conceiving himself aggrieved by the decree made and entered on the 11th day of February, 1924, in the above-entitled court and cause, does hereby appeal from the said order and decree, to the United States Circuit Court of Appeals, for the Ninth Circuit, for the reasons specified in his assignment of errors, which is filed herewith, and he prays that such appeal be allowed, and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit; and the plaintiff also desires that said appeal as aforesaid shall operate as a

*supersedeas*, and may continue in full force and effect the injunction heretofore made and entered of record in this cause during the pendency of the said appeal and until the final decision thereon by the said United States Circuit Court of Appeals, for the Ninth Circuit.

WHEREFORE petitioner prays that the said appeal may be allowed, and that upon his giving bond in an amount to be fixed by this court, the said appeal may operate as a *supersedeas* and may [44] continue in full force and effect the injunctions heretofore made and entered of record in this cause during the pendency of said appeal and until the final decision thereon by the said United States Circuit Court of Appeals for the Ninth Circuit.

And petitioner prays for all general and equitable relief.

EMERY VALENTINE,

Plaintiff and Appellant.

WICKERSHAM & KEHOE,

GROVER C. WINN,

Attorneys for Plaintiff and Appellant.

Service accepted and receipt acknowledged this 11th day of February, 1924.

HELLENTHAL & HELLENTHAL,

R. E. ROBERTSON,

Counsel for Defendants.

Filed in the District Court, Territory of Alaska, First Division. Feb. 11, 1924. John H. Dunn, Clerk. By \_\_\_\_\_, Deputy. [45]

In the District Court for the District of Alaska,  
Division Number One, at Juneau.

No. 2369-A.

EMERY VALENTINE, for Himself, and All  
Other Taxpayers of the City of Juneau,  
Alaska,

Plaintiff and Appellant,

vs.

R. E. ROBERTSON, B. M. BEHREND, as  
Treasurer of the City of Juneau, Alaska, and  
the CITY OF JUNEAU, ALASKA,

Defendants and Appellees.

#### ASSIGNMENT OF ERRORS.

Now comes the plaintiff and appellant and assigns the following errors committed by the court in the trial of the above-entitled cause, and in the rendition of the decree therein:

##### I.

The Court erred in overruling the plaintiff's demurrer to the defendant's affirmative answer in their answer to the plaintiff's amended complaint.

##### II.

The Court erred in holding that the matter set up in defendant's answer constituted any defense to the allegations in plaintiff's amended complaint.

##### III.

The Court erred in holding that the Common Council of the City of Juneau, Alaska, had power or authority to adopt and pass the resolution of

January 18th, 1924, and (or) the amended resolution of January 29th, 1924, for the payment of the sums therein mentioned to defendant Robertson for the uses therein set forth, or at all.

#### IV.

The Court erred in holding that the treasurer of the City of Juneau, Alaska, or the City of Juneau, Alaska, had power and authority to make the payment of the sums mentioned in the said resolutions of [46] January 18th, and January 29th, 1924, or either of them, to the said Robertson, for the uses therein set forth.

#### V.

The Court erred in refusing to grant the prayer of the plaintiff's amended complaint.

#### VI.

The Court erred in dismissing the plaintiff's complaint and action and in rendering judgment for defendants and against the plaintiff herein.

And for the said errors and others apparent on the face of the record, the plaintiff prays that the decree of the District Court be reversed, and since the whole of the record is before the court, that the United States Circuit Court of Appeals, for the Ninth Circuit, enter such decree for the plaintiff as prayed for in his complaint, as amended, and such other relief as he is entitled to have on the admissions of the pleadings and record, for his costs and disbursements in this action below and on appeal, and for such other decrees and orders as to this court may seem just and proper.

Dated this 11th day of February, 1924.

WICKERSHAM & KEHOE,  
GROVER C. WINN,

Attorneys for Plaintiff and Appellant.

Filed in the District Court, Territory of Alaska,  
First Division. Feb. 11, 1924. John H. Dunn,  
Clerk. By \_\_\_\_\_, Deputy. [47]

In the District Court for the District of Alaska,  
Division Number One, at Juneau.

No. 2369-A.

EMERY VALENTINE et al.,

Plaintiffs,

vs.

R. E. ROBERTSON et al.,

Defendants.

ORDER ALLOWING APPEAL AND DENYING  
SUPERSEDEAS.

On consideration of the petition for appeal and  
*supersedeas* filed this 11th day of February, 1924,  
in the above-entitled cause,—

IT IS HEREBY ORDERED, that the said ap-  
peal be and the same is hereby allowed, and that  
a transcript of the record in said cause, duly au-  
thenticated, may be sent to the United States Cir-  
cuit Court of Appeals for the Ninth Circuit, and  
it is further ordered, that upon the application of  
the plaintiff and appellant for the allowance of a  
*supersedeas* and stay bond, the same be and it is

hereby denied by the court, to which denial the plaintiff and appellant excepts, and an exception is hereby allowed.

Dated this 11th day of February, 1924.

THOS. M. REED,  
District Judge.

Copy received and service acknowledged this 11th day of February, 1924.

R. E. ROBERTSON,  
For Defendant.

Filed in the District Court, Territory of Alaska, First Division. Feb. 11, 1924. John H. Dunn, Clerk. By W. B. King, Deputy.

Entered Court Journal No. S, page 389. [48]

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In the District Court for the District of Alaska,  
Division Number One, at Juneau.

No. 2369-A.

EMERY VALENTINE, for Himself, and All  
Other Taxpayers of the City of Juneau,  
Alaska,

Plaintiff and Appellant,

vs.

R. E. ROBERTSON, B. M. BEHREND, as  
Treasurer of the City of Juneau, Alaska, and  
the CITY OF JUNEAU, ALASKA,  
Defendants and Appellees.

ORDER FIXING COST BOND ON APPEAL.

This cause coming on to be heard on petition for

appeal from the final order and decree of this Court against the plaintiff, the plaintiff and appellant moves the Court to fix the amount of a cost bond on said appeal,—

IT IS ORDERED, that the said cost bond to the opposite party be fixed in the sum of Two Hundred and Fifty Dollars, to answer all costs if he shall fail to sustain his appeal.

Dated this 11th day of February, 1924.

THOS. M. REED,

District Judge.

Service accepted and copy received this 11th day of February, 1924.

HELLENTHAL & HELLENTHAL,

Of Counsel for Defendants.

Filed in the District Court, Territory of Alaska, First Division. Feb. 11, 1924. John H. Dunn, Clerk. By \_\_\_\_\_, Deputy.

Entered Court Journal No. S, page 390. [49]

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In the District Court for the District of Alaska,  
Division Number One, at Juneau.

No. 2369-A.

EMERY VALENTINE, for Himself, and All  
Other Taxpayers in the City of Juneau,  
Alaska,

Plaintiff and Appellant,

vs.

R. E. ROBERTSON, B. M. BEHREND, as  
Treasurer of the City of Juneau, Alaska, and  
the CITY OF JUNEAU, ALASKA,

Defendants and Appellees.

## COST BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS, That we, Emery Valentine, as principal, and E. L. Pulver and Lockie McKinnon, as sureties, are held and firmly bound unto R. E. Robertson, B. M. Behrends, as Treasurer of the City of Juneau, Alaska, and the City of Juneau, Alaska, the defendants hereinabove named, in the full sum of Two Hundred and Fifty Dollars, to be paid to the said R. E. Robertson, B. M. Behrends, as Treasurer of the City of Juneau, Alaska, and the City of Juneau, Alaska, aforesaid, their said attorneys, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 11th day of February, 1924.

The condition of this obligation is such, however, that whereas the above-bounden Emery Valentine has taken an appeal in the above-entitled and numbered cause to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the decree rendered by the District Court aforesaid on the 11th day of February, 1924,

Now, if the said Emery Valentine shall prosecute his said [50] appeal to effect and answer and pay all such costs and damages as may be awarded against him if he shall fail to sustain his appeal and make his plea good, then this obligation shall



be null and void; otherwise to remain in full force and effect.

EMERY VALENTINE,  
Principal.  
E. L. PULVER,  
LOCKIE McKINNON,  
Sureties.

Territory of Alaska,  
Juneau Precinct,—ss.

E. L. Pulver and Lockie McKinnon, being first duly sworn, each for himself, deposes and says; that he is one of the sureties whose name is signed to the above and foregoing bond, that he signed the same for the uses and purposes therein set forth; that he is a resident within the Territory of Alaska, but no counsellor or attorney at law, marshal, clerk, or other officer, of any court; that he is worth the sum specified in the undertaking, exclusive of property exempt from execution, and over and above all just debts and liabilities.

E. L. PULVER.  
LOCKIE McKINNON.

Subscribed and sworn to before me this 11th day of February, 1924.

[Seal]

J. W. KEHOE,  
Notary Public for Alaska.

My commission expires Sept. 15, 1925.

Copy received and service accepted this 11th day of February, 1924.

HELLENTHAL & HELLENTHAL,  
Of Counsel for Defendants.

Approved Feby. 11, 1924.

THOS. M. REED,  
Judge.

Filed in the District Court, Territory of Alaska,  
First Division. Feb. 11, 1924. John H. Dunn,  
Clerk. By \_\_\_\_\_, Deputy. [51]

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In the District Court for the District of Alaska,  
Division Number One, at Juneau.

No. 2369-A.

EMERY VALENTINE, for Himself, and All  
Other Taxpayers of the City of Juneau,  
Alaska,

Plaintiff and Appellant,

vs.

R. E. ROBERTSON, B. M. BEHREND'S, as  
Treasurer of the City of Juneau, Alaska, and  
the CITY OF JUNEAU, ALASKA,

Defendants and Appellees.

#### CITATION ON APPEAL.

The President of the United States of America,  
to R. E. Robertson, B. M. Behrends, as Treas-  
urer of the City of Juneau, Alaska, and the  
City of Juneau, Alaska, and to Their Attorneys  
of Record Herein, GREETING:

You and each of you are hereby cited and ad-  
monished to be and appear in the United States Cir-  
cuit Court of Appeals for the Ninth Circuit, to be  
holden in the city of San Francisco, State of Cali-

fornia, within thirty days from the date hereof, pursuant to an appeal filed in the clerk's office for the District Court for the District of Alaska, Division Number One, at Juneau, Alaska, in a cause wherein Emery Valentine is appellant and you are the appellees, then and there to show cause, if any there be, why the decree mentioned in said appeal should not be corrected and speedy justice done to the parties in that behalf.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, this 11th day of February, 1924.

THOS. M. REED,  
District Judge.

Copy received Feb. 11, 1924.

HELLENTHAL & HELLENTHAL.  
R. E. ROBERTSON.

Filed in the District Court, Territory of Alaska, First Division. Feb. 11, 1924. John H. Dunn, Clerk. By \_\_\_\_\_, Deputy. [52]

In the District Court for the District of Alaska,  
Division Number One, at Juneau.

No. 2369-A.

EMERY VALENTINE, for Himself, and All  
Other Taxpayers of the City of Juneau,  
Alaska,

Plaintiff and Appellant,

vs.

R. E. ROBERTSON, B. M. BEHREND, as  
Treasurer of the City of Juneau, Alaska, and  
the CITY OF JUNEAU, ALASKA,  
Defendants and Appellees.

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the District Court for Alaska,  
Division No. 1, Juneau, Alaska:

Sir: You will please make up a transcript of  
the record on appeal in the above-entitled and num-  
bered cause, and include therein the following  
papers on file in your office or on the records  
thereof, to wit:

1. Plaintiff's amended complaint (and admission  
of service).
2. Application for a temporary injunction.
3. Affidavit for injunction by Valentine.
4. Temporary restraining order.
5. Amended restraining order.
6. Demurrer R. E. Robertson to amended com-  
plaint.
7. Motion to dissolve restraining order.

8. Answer to amended complaint (including Exhibit "A").
9. Demurrer of plaintiff to further and affirmative answer.
10. Order overruling demurrers.
11. Judge Reed's opinion.
12. Judgment for defendants.
13. Petition for appeal and supersedeas.
14. Assignment of errors.
15. Order allowing appeal.
16. Order fixing cost bond on appeal.
17. Cost bond on appeal.
18. Citation on appeal.
19. This praecipe.

Said transcript to be made up in accordance with the rules [53] of the District Court for Alaska, First Division, and the United States Circuit Court of Appeals for the Ninth Circuit.

WICKERSHAM & KEHOE,  
GROVER C. WINN,

Attorneys for Appellant.

Service acknowledged and copy received this 11th day of February, 1924.

HELLENTHAL & HELLENTHAL,  
Of Counsel for Defendants.

Filed in the District Court, Territory of Alaska, First Division. Feb. 11, 1924. John H. Dunn, Clerk. By \_\_\_\_\_, Deputy. [54]

In the District Court for the District of Alaska,  
Division No. 1, at Juneau.

United States of America,  
District of Alaska,  
Division No. 1,—ss.

CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO TRANSCRIPT OF RECORD.

I, John H. Dunn, Clerk of the District Court for the District of Alaska, Division No. 1, hereby certify that the foregoing and hereto attached fifty-four pages of typewritten matter, numbered from 1 to 54, both inclusive, constitute a full, true, and complete copy, and the whole thereof, of the record, as per the praecipe of appellant, on file herein and made a part hereof, in the cause wherein Emery Valentine, for himself and all other taxpayers of the City of Juneau, Alaska, is plaintiff and appellant, and R. E. Robertson, B. M. Behrends, as Treasurer of the City of Juneau, and the City of Juneau, Alaska, are defendants and appellees, No. 2369-A, as the same appears of record and on file in my office, and that said record is by virtue of a petition for appeal and citation issued in this cause and the return thereof in accordance therewith.

I do further certify that this transcript was prepared by me in my office, and that the cost of preparation, examination, and certificate, amounting to Twenty-five and 20/100 Dollars (\$25.20), has been paid to me by counsel for appellant.

IN WITNESS WHEREOF I have hereunto set my hand and the seal of the above-entitled court this 18th day of February, 1924.

[Seal]

JOHN H. DUNN,  
Clerk.

By \_\_\_\_\_,  
Deputy.

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[Endorsed]: No. 4204. United States Circuit Court of Appeals for the Ninth Circuit. Emery Valentine, Appellant, vs. R. E. Robertson, B. M. Behrends, as Treasurer of the City of Juneau, Alaska, and the City of Juneau, Alaska, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the District of Alaska, Division No. 1.

Filed February 27, 1924.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

